



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Health TITLE-SERIES: 64-114

RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: 64-114 Public Health Standards for Businesses Remaining Open During the Covid-19  
Outbreak

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: 16-1-4

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF  
THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY  
PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

16-3-1

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN  
EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 5/18/2020

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 6/17/2020

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO  
COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

n/a

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This emergency rule establishes uniform public health standards for businesses operating in the state during the declared state of emergency due to the COVID-19 pandemic, and the provisions of this emergency rule supersede any conflicting provisions of local board of health or other local governing body order related to the COVID-19 pandemic.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The rule defines retail businesses, limits the occupancy rate per square footage to retail businesses only, encourages the wearing of cloth face coverings, and exempts polling places and precincts specifically from the occupancy rates.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

n/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			0
<b>Personal Services</b>			0
<b>Current Expenses</b>			0
<b>Repairs and Alterations</b>			0
<b>Assets</b>			0
<b>Other</b>			0
<b>2. Estimated Total Revenues</b>			0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

n/a

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

**Yes**

**April L Robertson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

**TITLE 64**  
**LEGISLATIVE RULE**  
**BUREAU FOR PUBLIC HEALTH**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 114**  
**PUBLIC HEALTH STANDARDS FOR BUSINESSES REMAINING OPEN**  
**DURING THE COVID-19 OUTBREAK**

**§64-114-1. General.**

1.1. Scope -- This emergency rule establishes uniform public health standards for businesses operating in the state during the declared state of emergency due to the COVID-19 pandemic, and the provisions of this emergency rule supersede any conflicting provisions of local board of health or other local governing body order related to the COVID-19 pandemic.

1.2. Authority -- W. Va. Code §§ 16-3-1, 16-1-4, and 29A-3-15.

1.3. Filing Date --

1.4. Effective Date --

1.5. Sunset Provision -- This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

1.6. Applicability -- This rule applies to all businesses permitted to remain operational or open to the public by Executive Order of the Governor of the State of West Virginia. This rule does not apply to health care providers.

1.7. Enforcement -- this rule may be enforced by the Commissioner of the West Virginia Bureau for Public Health or by the Local Health Officer of the Local Board of Health for the jurisdiction in which the business operates.

**§64-114-2. Definitions.**

2.1. Business -- A business or operation conducted by private or public employer or entity, or both, including non-profit businesses or operations in West Virginia permitted to remain operational or open to the public by Executive Order of the Governor of the State of West Virginia during the state of emergency.

2.2. Commissioner -- The Commissioner of the Bureau for Public Health of the West Virginia Department of Health and Human Resources.

2.3. Customer floor space -- The amount of floor space open to the public by the business.

2.4. Local Health Officer -- The individual who fulfills the duties and responsibilities of the health officer for a local board of health, or his or her designee.

2.5. Public -- Persons not employees of the business.

2.6. Retail business -- Any business primarily engaged in retail sales.

**§64-114-3. Essential Businesses and Operations.**

3.1. Essential Businesses and Operations. As defined by Executive Order 9-20, or as amended by subsequent Executive Order, any business conducted by private or public employers or entities, or both, including non-profit businesses or operations in any county, shall direct their employees, contractors, and vendors to work from home, to the maximum extent possible, or to otherwise work remotely in order to limit the circumstances requiring their employees to leave home.

3.2. Public Health Standards for Businesses Remaining Open. Notwithstanding the provisions of paragraph 3.1., businesses open to the public must take the following minimum additional actions:

3.2.a. Implement a written plan to limit staff, contractors, and vendors to essential personnel;

3.2.b. Implement social distancing practices in the workplace where possible, including remaining at a minimum six-foot distance from other persons;

3.2.c. Supplying multiple, adequate disinfecting and hygienic supplies and dispensers to staff and other persons as needed, such as disinfecting wipes or spray, hand sanitizer, and soap and water consistent with the number of persons allowed to be on the premises as set forth herein;

3.2.d. For the protection of both employees and the public, encourage, to the greatest extent practicable, the wearing of cloth face coverings in accordance with current public health guidance while on the premises;

3.2.e. Provide protective barriers for employees exposed to the general public; and

3.2.f. Follow, to the greatest extent practicable, all applicable public health guidance issued by the Office of the Governor and the Bureau for Public Health.

3.3. Public Access Restrictions. All businesses open to the public shall limit access to the general public as follows:

3.3.a. No more than two individual members of the public may enter a retail business per 1,000 square feet of customer floor space at any given time; businesses of less than 1,000 square feet of customer floor space shall not permit that space to be occupied by more than five persons, including employees, at any given time.

3.3.b. For retail businesses whose sales are comprised of at least 80 percent grocery food products or more, no more than three members of the public may enter a business per 1,000 square feet of customer floor space at any given time.

3.3.c. To ensure that the number of people per square foot requirements are not violated, each retail business shall track the number of people who enter and leave the business and control the capacity on a one-in, one-out basis after the maximum capacity required by this section has been reached.

3.3.d. All businesses shall take actions to establish appropriate social distancing measures for the public to the greatest extent possible, including but not limited to, marking areas a minimum of six feet apart at any area where persons are likely to stand or wait in line, creating one-way aisles, and any other restrictions which limit close contact with other people.

3.3.e. To the extent practicable, a business shall encourage its customers to place their order ahead to allow customers to pick up and pay without entering the business.

3.3.f. Any business that remains open to the public shall prominently display the directives required by this section in a conspicuous manner at each public point of entry to the business.

3.3.g. Subsections 3.3.a., 3.3.b., and 3.3.c. shall not apply to election voting polling places or precincts during the early voting period or on Election Day; *Provided:* That all county election officials shall operate voting precincts according to all other health and safety practices required by this rule, as well as any additional mandatory requirements issued by the Governor or other state authority.

**§64-114-4. Penalties.**

4.1. Any person who is subject to the provisions of this rule who fails to comply with the requirements herein or otherwise fails to act in accordance with this rule may be subject to enforcement order issued by the Commissioner or local health officer, and is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$25, nor more than \$200, as provided by W. Va. Code §16-3-2.

**§64-114-5. Administrative Due Process.**

5.1. Any person adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the Bureau procedural rule, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR1.